

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Telecommunications Act of 1996:)	CC Docket No. 96-115
)	
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information;)	
)	
Implementation of)	CC Docket No. 96-149
the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended;)	
)	
2000 Biennial Regulatory Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers)	CC Docket No. 00-257
)	

COMMENTS OF AT&T CORP.

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October 21, 2002

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Pursuant to the Commission's Third Further Notice of Proposed Rulemaking, FCC 02-214, released on July 25, 2002 ("Notice"), and section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits these comments on telecommunications carriers' use of customer proprietary network information ("CPNI").

In the Notice, the Commission seeks to refresh the record on two issues—(a) regulation of foreign storage of and access to domestic CPNI, and (b) protections for carrier information and enforcement mechanisms—and requests comment on a third, CPNI implications of a carrier abandoning a market, either by a bankruptcy, merger, or asset sale. With respect to the first two issues, AT&T incorporates by reference its previous comments in this proceeding.

See AT&T Reply Comments, CC Docket No. 96-115 (filed Apr. 14, 1998).¹ As for the third, AT&T demonstrates below that no additional notice or approval requirements are necessary for the transfer of CPNI from an exiting carrier to an acquiring carrier. Customers already expect that their CPNI will be transferred as an inherent part of any carrier acquisition, and existing statutory requirements fully protect the customers' privacy in these circumstances.

In addition, as AT&T explains more fully in its comments in the *Wireline Broadband* proceeding, Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33 (rel. Feb. 15, 2002) ("*Wireline Broadband* proceeding"), unbundled DSL service is a telecommunications service. As such, it is subject to the CPNI requirements.

I. NO ADDITIONAL NOTICE OR APPROVAL REQUIREMENTS ARE NECESSARY FOR THE TRANSFER OF CPNI FROM AN EXITING CARRIER TO AN ACQUIRING CARRIER.

In its Notice, the Commission seeks comment on the CPNI implications of a carrier abandoning a market, either by a bankruptcy, merger, or asset sale. In particular, the Notice raises two questions. First, if an exiting carrier is allowed to disclose CPNI to an acquiring carrier, should the exiting carrier be required "to state that fact in advance notice

¹ On the first issue, those comments show that the location of domestic CPNI abroad does not change a carrier's section 222 obligations, and thus the Commission should not restrict foreign storage of or access to domestic customer information. In addition, any need the FBI may have for access to such information needs to be addressed by Congress, because addressing that need is outside the purview of the Commission's authority. On the second issue, those comments demonstrate that there have been violations of the Act. The Commission should define what constitutes section 222(b) carrier information and strictly enforce that section of the Act. As AT&T set forth in its prior pleadings, "PIC information, interconnected call information, access information, end user information relating to customers of other carriers using ILEC access services, and outPIC information should all be protected from ILEC marketing use under 222(b)." AT&T Reply Comments, CC Docket No. 96-115, at 7 (filed Apr. 14, 1998).

provided to customers acquired by the sale or transfer from another carrier in compliance with our authorization and verification (slamming) rules?” Notice ¶ 146. And second, “to the degree that the exiting carrier has obtained CPNI approvals from its customer, should the new carrier be deemed to have received such approvals, or should it be required to provide notice and obtain approval for CPNI use and disclosure from the acquired customers?” *Id.* AT&T responds to each of these questions in turn.

A. Consistent With Consumers’ Expectations and Congress’s Intent, The Exiting Carrier Should Be Able To Disclose CPNI To The Acquiring Carrier Without Providing Customers Additional Notice Or Obtaining From Customers Additional Approval.

The exiting carrier should be able to disclose CPNI to the acquiring carrier without providing customers additional notice or obtaining from customers additional approval. Although the Commission has not previously ruled on this issue expressly, there have been many instances of (1) LECs transferring entire exchanges to other carriers, and (2) long distance carriers transferring customers to other IXC. AT&T believes that in these various transactions the exiting carrier transferred its customers’ CPNI without obtaining specific customer CPNI approval or seeking Commission authority for the information transfer, and that those transfers did not result in the dissemination of private customer information.² Customers understand that,

² For example, Sprint acquired GTE’s long distance customers in those areas where Bell Atlantic lacked in-region long distance authority so that the Bell Atlantic-GTE merger could proceed. Order, *Sprint Communications Company, L. P. Petition for Waiver*, 15 FCC Rcd. 16487 (2000) (granting waiver of the PIC change rules, which are entirely distinct from the CPNI rules). In the following PIC change waivers, it was evident that “customer accounts” were being transferred. Order, *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, EqualNet Corporation Request for Waiver*, 14 FCC Rcd. 3975, ¶ 4 (1999); Order, *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, CoreComm Limited Request for Waiver*, 14 FCC Rcd. 7301, ¶ 4 (1999).

to ensure continuity in service, exiting carriers transfer their CPNI to acquiring carriers as an inherent part of the commercial transaction. Customers already will receive notification of the change in carrier under the streamlined PIC-change procedures,³ and they naturally will assume that the surviving carrier will obtain their records as part of the transaction. Given these expectations (coupled with the follow-on carrier's duty to adhere to section 222), no additional notice or approval is necessary to protect customers' privacy expectations and rights.

Moreover, the acquiring carrier already has the same duties as the exiting carrier to protect customer privacy and to ensure the proper handling of CPNI. Under section 222(c)(1), the acquiring carrier cannot use, disclose, or permit access to CPNI "[e]xcept as required by law or with the approval of the customer" other than in its provision of the telecommunications service from which the customer information is derived or services necessary to, or used in, the provision of that service.⁴ 47 U.S.C. § 222(c)(1). Consequently, the customer's CPNI rights are protected to the same degree as when he or she was served by the exiting carrier. In all events, should a customer be dissatisfied with the acquiring carrier's handling of CPNI, he or she could pursue any available legal action against that carrier, switch to another carrier, or change his or her CPNI approval status.

Indeed, requiring additional notice and approval unnecessarily imposes a burden that Congress did not contemplate. Section 222(d) provides that "[n]othing in this section

³ First Report and Order and Fourth Report and Order, *2000 Biennial Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, 16 FCC Rcd. 11218, ¶¶ 9-10 (2001); 47 C.F.R. § 64.1120(e) (2000).

⁴ To the extent the Commission believes that section 222(c)(1) is ambiguous in its application to acquiring carriers, the Commission should simply clarify that the provision imposes an obligation on acquiring carriers not to use, disclose, or permit access to individually identifiable CPNI except as permitted by that section.

prohibits a telecommunications carrier from using, disclosing, or permitting access to [CPNI] obtained from its customers, either directly or indirectly through its agents—to initiate, render, bill, and collect for telecommunications services.” 47 U.S.C. § 222(d)(1). Inhibiting the transfer of CPNI to an acquiring carrier would preclude the carrier from properly servicing the customers and resolving any outstanding disputes as to prior billing—an obligation that the acquiring carrier typically assumes.

Restricting the transfer of CPNI would also undermine consumers’ interests. Not only could such restrictions lead to service disruption and lack of adequate customer care, but they would also ill-serve consumers in other ways. For instance, without access to CPNI, the acquiring carrier would encounter difficulties in informing its new customers of the benefits of the available products and services. As a result, the new customers might fail to learn about desirable offerings, and they might receive less-targeted telemarketing calls, which make offerings that do not appeal to them. In addition, by diminishing a carrier’s knowledge of its customers and needs, a restriction on CPNI transfer could make it more difficult for a carrier to design innovative quality products and to bring them to market. It could also “vitate a [carrier’s] ability to achieve efficiencies through integrated marketing to smaller customers,” Report and Order, *Computer III Remand*, 6 FCC Rcd. 7571, ¶ 85 n.155 (1991),⁵ as well as

⁵ See also Memorandum Opinion and Order, *Motion of Southwestern Bell Mobile Systems, Inc. for a Declaratory Ruling that Section 22.903 and Other Sections of the Commission’s Rules Permit the Cellular Affiliate of a Bell Operating Company to Provide Competitive Landline Local Exchange Service Outside the Region in which the Bell Operating Company is the Local Exchange Carrier*, 11 FCC Rcd. 3386, ¶ 19 (1995) (“[T]his proposed integration of wireless and landline services offers substantial benefits to consumers by avoiding duplicative costs, increasing efficiency, and enhancing [Southwestern Bell’s] ability to provide innovative service.”); Memorandum Opinion and Order on Reconsideration, *In re Applications of Craig O. McCaw and American Telephone and Telegraph Company, for Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries*, 10 FCC Rcd. 11786, ¶ 15 (footnote continued on following page)

“result[] in higher prices and reduced quality and variety of regulated services,” *Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies*, Report and Order, 2 FCC Rcd. 143, ¶ 29 (1987).

Further, there is no basis for “allow[ing] more liberal CPNI sharing” in the case of LEC customer base transitions than in the case of IXC transfers. Notice, ¶ 147. Customers value continuity in long distance service just as highly as they value “dial tone.” Permitting LECs to transfer CPNI on more liberal terms than IXCs would thus not only discriminate in favor of the LECs without any statutory basis, but it would also frustrate the expectations of consumers. Because there is no principled basis for treating LECs more liberally than IXCs with respect to the transfer of CPNI, any ruling that gave LECs preferential rights with respect to the transfer of CPNI would be arbitrary and capricious, and hence unlawful.

Finally, although, as shown above, the exiting carrier should *not* be required to issue any notice of CPNI transfer, if the Commission believes that some sort of notice is required, all that is needed is an addendum to the letter that carriers already must send in order to comply with the Commission’s “authorization and verification (slamming) rules.” Notice, ¶ 146 (*citing* 47 C.F.R. § 64.1120(e)). The letter could simply advise the affected subscribers that their CPNI has been or is being transferred, that they have the same rights as previously, and that they are free to change their CPNI approval status at any time by notifying the new carrier. Because

(footnote continued from previous page)

(1995) (“The ability of a customer, especially a customer who has little or infrequent contact with service providers, to have one point of contact with a provider of multiple services is efficient and avoids the customer confusion that would result from having to contact various departments within an integrated, multi-service telecommunications company . . . to obtain information about the various services . . .”), *affirmed sub. nom SBC Communications, Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995) (explicitly permitting AT&T to bundle long distance and cellular service).

the acquiring carrier is already subject to section 222, any additional notice or approval burdens placed on the CPNI transfer would fail to survive First Amendment scrutiny. *See Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557, 564-65 (1980).

B. The Acquiring Carrier Should Not Be Required To Provide A Separate Notice Or To Obtain Approval For CPNI Use And Disclosure.

For the same reasons, the acquiring carrier should not be required to provide a separate notice or to obtain approval for CPNI use and disclosure. Instead, the customer's CPNI approval status should transfer to the acquiring carrier. Because that carrier inherits the exiting carrier's duties to protect CPNI, because there is no evidence of post-acquisition misuse of CPNI, because customers can switch carriers if dissatisfied with the acquiring carrier, and because any additional obligations would be unconstitutional under *Central Hudson*, the Commission should reject such an obligation. Indeed, it would be highly inefficient and confusing to customers if the acquiring carrier had to provide an additional CPNI notice, especially for those customers who recently made a CPNI election. These customers might even view the additional notice as a nuisance or an attempt to wear-down the subscribers who previously chose to opt-out.

II. AT&T'S COMMENTS IN THE WIRELINE BROADBAND PROCEEDING ESTABLISH THAT UNBUNDLED DSL SERVICE IS A TELECOMMUNICATIONS SERVICE, AND IS THUS SUBJECT TO THE CPNI REQUIREMENTS.

The Commission also seeks comment on the proper application of section 222 to DSL providers. On this issue, AT&T incorporates by reference its comments in the *Wireline Broadband* proceeding. *See* Comments of AT&T, CC Docket No. 02-33 (filed May 3, 2002); Reply Comments of AT&T, CC Docket No. 02-33 (filed July 1, 2002). In short, because DSL service provided by a LEC to another carrier or an ISP is a Title II telecommunications service,

the CPNI requirements apply. If, however, DSL service is provided as part of an enhanced bundled offering, the CPNI rules would not apply. Finally, if the Commission were to deem LEC offerings of DSL services to other carriers or ISPs to be Title I information services (which, for the reasons explained in AT&T's *Wireline Broadband* comments, it should not), then the CPNI rules would not apply to that service.

CONCLUSION

For the foregoing reasons, the Commission should not impose additional CPNI notice or approval obligations on exiting carriers or acquiring carriers.

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